

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region V

In The Matter Of:)	
)	
NL Industries/Taracorp)	
Granite City, Illinois)	
)	
Respondents: NL Industries, et al.)	U.S. EPA
)	Docket No.
)	
Proceeding Under Section 106(a) of the)	
Comprehensive Environmental Response,)	
Compensation, and Liability Act of)	
1980, as amended (42 U.S.C. § 9606(a)))	

NOTICE BY CHEMETCO, INC. OF SUFFICIENT CAUSE DEFENSES

UNDER SECTIONS 106(b) and 107(c)3 OF CERCLA

Comes now Respondent, CHEMETCO, INC., one of the named PRPs in the above matter, by R. Emmett Fitzgerald, its attorney, and under Paragraph 30 of the Administrative Order For Remedial Design and Remedial Action issued by USEPA on November 27, 1990, respectfully submits the following as its sufficient cause defenses under Sections 106(b) and 107(c)3 of CERCLA.

Attachment V included with your June 25 letter shows the ranking by weight of all PRPs and captioned "Incoming Transactions - Generator Ranking Summary." Chemetco is listed #19 for 5,400,943 pounds or 1.1483% of total site amount. Chemetco denies these numbers are applicable or accurate and objects to being ranked in the manner determined by USEPA.



Section 107 of CERCLA places cleanup responsibility on "any person who...arranged for disposal or treatment...of hazardous substances...at any facility...containing such hazardous substances..." Chemetco maintains it did not arrange for disposal or treatment of hazardous substances and there is absolutely no evidence it did. Chemetco maintains it sold products, in the great majority (94%) of cases manufactured to the purchaser's specifications, rather than wastes. Chemetco maintains further that NL/Taracorp used Chemetco's products to produce its own finished products and sold them in the market.

Chemetco, Inc. is a secondary copper smelter producing four products from the consumption of scrap copper-bearing metals: copper anodes, construction grade slag materials, lead-tin solder and unrefined zinc oxide. The copper and zinc oxide are sold to others for further refining into pure metal products. The slag is granulated, screened and graded to both housing and road construction specifications and sold to users of the materials. The lead-tin solder is refined to customer specifications, cast into sows or ingots and sold. The only wastes produced by Chemetco and shipped for disposal or treatment are used oils and cleaning solvents.

The lead-tin solder refining starts with a crude solder "pig" weighing between 10,000 and 15,000 pounds. This "pig" contains approximately 1% copper as an impurity. The refining process begins by remelting the "pig" in a gas fired "kettle". After the charge has become molten, sulfur is added to remove the copper, which comes off in a "dross". The dross is skimmed from the top of the molten bath and returned to Chemetco's furnaces for reclamation of the

contained metals -- copper, lead and tin. At this point adjustments are made in the ratio of lead and tin to conform to the customer's specification. After the refining is complete, the tin-lead solder is cast into either 1,800 pound "sows" or 60 pound ingots, banded, palletized and sold.

During the critical time period Chemetco shipped lead-tin solder to NL/Taracorp in Granite City, Chemetco produced crude the lead-tin solder pigs which were delivered to its subsidiary for refining. The subsidiary did not buy the material, but rather refined it to Chemetco customer specifications under a "tolling" agreement. Chemetco then sold the refined lead-tin solder product to various customers, one of which was NL/Taracorp.

The terms "sold to specifications" or "refined to specifications" mean the material is refined to be within certain contract or ASTM constituent percentages in the metals. Contract or ASTM specifications may be the same but are sometimes different depending upon the customer's proposed use of the material. NL/Taracorp's usual specifications were "ASTM B32", which is: 20% tin, 80% lead, .5% antimony, and .08% copper.

Chemetco has compiled from information supplied it by USEPA the attached Schedule A--"Metal Transactions with NL/Taracorp" (3 pages), and, using USEPA's classifications of materials delivered to the NL/Taracorp site, Chemetco compiled the attached Schedule B (2 pages) of deliveries of (1) tin-lead alloy, (2) lead-tin alloy, (3) scrap copper wire, (4) solder, (5) scrap solder, (6) antimonial lead, (7) scrap antimony lead, (8) scrap lead, (9) NL/Taracorp reject material, (10) iron hooks, and (11) hooks. Schedule B clearly shows that a large majority of the tin-lead alloy, lead-tin alloy, and

substantial portions of the solder and scrap solder sold and delivered to NL/Taracorp during the critical time period came from Chemetco.

A careful comparison of Schedule A and Schedule B clearly indicates the sales made by Chemetco to NL/Taracorp on Schedule A are the same purchases and deliveries to NL/Taracorp shown on Schedule B. Chemetco did not broker the deliveries of scrap metal wastes shown on Schedule B. Chemetco manufactured the lead-tin solder materials for sales to NL/Taracorp..

USEPA's Attachment V states Chemetco shipped a total of 5,400,943 pounds. Not less than 4,829,480 pounds (95%) of this total is lead-tin alloys and solder, which Chemetco manufactured to NL/Taracorp's specifications. This 4,829,480 pounds could not be classified as a waste, and Chemetco certainly did not arrange for its treatment or disposal by NL/Taracorp.

Schedule A also shows that USEPA included sales by NL/Taracorp to Chemetco of scrap copper wire in the total amount of 295,138 pounds in EPA's calculations of deliveries to the NL/Taracorp site. These deliveries of scrap copper wire were deliveries from NL/Taracorp to Chemetco and should not be included in deliveries from Chemetco to NL/Taracorp.

Chemetco additionally points out to USEPA the prices NL/Taracorp paid Chemetco for the material listed on Schedule A. NL/Taracorp paid a total of \$8,134,066 for 5,177,265 pounds of material. This averages \$1.57 per pound. Waste solder metals do not have such high values.


Federal courts have consistently held that manufactured products sold to customers for further use in manufacturing other products are not contracts for the disposal or treatment of wastes and the vendors are not liable under

Section 107 of CERCLA. United States v. Westinghouse, 22 ERC 1230 (S.D. Ind. 1983); and Hines Lumber v. Vulcan Materials, 685 F. Sup. 651 (N.D. Ill. 1988).

Chemetco believes it has provided USEPA with sufficient information to accurately revise Attachment V and to dismiss CHEMETCO, INC. as a PRP in this matter based upon de minimis (less than 0.06%).

WHEREFORE, the Respondent, CHEMETCO, INC., prays that it be dismissed as one of the Respondents in this matter and its defenses be held to constitute sufficient cause.

CHEMETCO, INC., Respondent,

By 
R. Emmett Fitzgerald, 823902
Its Attorney
Hoagland, Fitzgerald, Smith & Pranaitis
401 Market Street, P. O. Box 130
Alton, Illinois 62002
Telephone: 618-465-7745

LOADS TO TNRACORP:

NETRAL TRANSACTIONS WITH NL/TNRACORP

FROM USER'S RUN REQUEST

DATE	RECEIVING DESCRIPTION	TONNAGE	CH NUMBER	ML CONTRACT	PRICE	notes
4/8/75	Remelt Scrap Solder	198.40	MG	6263	13856.26	
2/25/75	Solder	166.28	MG	6244	16350.31	
7/11/77	Fin Lead Alloy	43500	MG	6C-0072	38350.4	
12/13/77	Scrap Solder	405.40	CMS028	6C-0896	62143.77	
12/15/77	Scrap Solder	429.40	CMS035	6C-0896	54696.97	
1/9/78	Scrap Solder	408.94	CMS096	6C-0963	56556.4	
1/23/78	Fin-Lead Alloy	414.50	CMS120	6C-0963	60931.5	
1/30/78	Fin-Lead Alloy	406.37	CMS153	6C-0963	56172.53	
2/3/78	Fin-Lead Alloy	400.46	CMS167	6C-0963	61391.21	
2/17/78	Fin-Lead Alloy	396.77	CMS210	6C-0963	59467.89	
2/23/78	Solder	397.56	CMS233	6C-0963	56071.86	
2/28/78	Solder	421.14	CMS247	6C-0963	59843.99	
3/15/78	Fin Lead alloy	423.38	CMS300	6C-0963	56382.71	
3/20/78	Solder	426.40	CMS310	6C-963	49121.28	
3/31/78	Scrap solder	417.58	CMS345	6C-0963	48309.83	
4/3/78	Solder	387.80	CMS352	6C-0963	46896.65	
4/10/78	Fin-Lead Alloy	396.19	CMS376	6C-0963	53242.41	
4/14/78	Fin-Lead alloy	434.57	CMS400	6C-0963	50557.81	
4/18/78	Fin-Lead alloy	385.39	CMS431	6C-0963	54955.72	
4/26/78	Fin-Lead alloy	416.75	CMS424	6C-0963	49498.22	
4/21/78	Solder	335.64	CMS442	6C-0963	51360.27	
4/28/78	Fin-Lead alloy	374.20	CMS462	P-327 Misc	41609.29	
5/4/78	Lead tin alloy	320.46	CMS475	P-327 Misc	48129.6	
5/12/78	Lead tin alloy	395.38	CMS489	P 963 Misc	31411.49	
5/15/78	Fin-Lead Alloy	451.32	CMS497	P327 Misc	42013.08	
5/25/78	Lead tin alloy	293.70	CMS511	P327 Misc	47749.66	
5/31/78	Lead-Fin Alloy	375.40	CMS530	P 327	27986.67	
6/2/78	Fin Lead Alloy	435.43	CMS545	P 327 Misc	41203.9	
6/5/78	Fin Lead Alloy	413.50	CMS552	P327 Misc	56629.03	
6/20/78	Lead-Fin Alloy	412.36	CMS559	P327 Misc	49036.97	
6/26/78	Lead-Fin alloy	424.96	CMS600	P 327	53911.95	
6/28/78	Lead - tin alloy	399.18	CMS634	P327 Misc	54457.04	
7/10/78	Lead tin alloy	425.36	CMS678	P327 Misc	55529.52	
7/11/78	Lead tin alloy	423.16	IMS5285	P 327	51653.89	
7/12/78	Lead tin alloy	429.36	IMS5286	Nlto 1703	54322.73	
7/12/78	Lead tin alloy	427.96	IMS5286	Nlto 1703	70806.29	
7/14/78	Lead tin alloy	391.98	CMS685	P 327	69328.73	
7/19/78	Lead-Fin alloy	393.98	CMS706	6C-1704	69097.06	
7/27/78	Lead tin alloy	383.68	CMS737	6C - 1704	53226.96	
7/24/78	Lead tin alloy	417.96	CMS713	6C - 1704	52061.77	
7/31/78	Lead-Fin alloy	354.02	CMS753	6C-1704	60429.19	
9/7/78	Solder metal	404.96	CMS889	6C-1704	51276.29	
9/11/78	Solder metal	410.16	CMS901	6C-1704	48389.29	
8/3/78	Lead-Fin Alloy	428.34	CMS769	6C-1704	62736.4	
8/16/78	Fin Lead alloy	399.78	CMS807	6C-1704	62098.22	
8/25/78	Fin Lead alloy	351.62	CMS827	6C 1704	57337.59	
9/1/78	Lead tin alloy	341.84	CMS847	6C 1704	50895.99	
9/15/78	Fin Lead alloy	368.80	CMS869	6C 1704	45485.56	
9/20/78	Lead tin alloy	429.34	CMS917	6C 1704	54420.13	
9/22/78	Lead tin alloy	425.20	CMS931	6C 1704	64380.61	
9/27/78	Lead tin alloy	390.78	CMS941	6C 1704	65093.87	
9/29/78	Lead tin alloy	423.16	CMS971	6C 1704	61661.18	
10/4/78	Lead tin alloy	389.18	CMS983	6C 2251	65560.18	
10/9/78	Lead tin alloy	424.36	CMS010	6C 2251	69698.25	
10/10/78	Lead tin alloy	383.00	CMS043	6C 2251	67719.37	
	Lead tin alloy	424.96	CMS054	6C 2251	63019.96	

Material shipped from Belgium
Shipped to Alltome, PA plant
Shipped to Granite City
Shipped on to Alltome, PA by Tetracorp
Chemetco
Chemetco

EXHIBIT "A"

No Taracorp settlement paper attached
No Taracorp Settlement paper attached

Came from Belgium, to Chemelco, to Taracorp?
same as above

From Antwerp

12/27/78	tin lead alloy	38580	CH6175	GC-2251	56828.34
10/23/78	tin/lead alloy	42634	CH6276	GC-2251	78702.36
11/8/78	tin/lead alloy	41634	CH6237	GC-2251	73356.42
11/3/78	tin/lead alloy	37022	CH6199	GC-2251	50231.9
10/27/78	Lead-Tin alloy	41356	CH6319	GC-2251	6728.72
11/13/78	Solder	41256	CH6328	GC-2251	60411.16
11/13/78	tin/lead alloy	38798	CH6368	GC-2251	56070.87
11/16/78	tin/lead alloy	41318	CH6400	GC-2251	55676.01
11/27/78	Lead - Tin Alloy	45276	CH6437	GC-2251	77960.74
11/30/78	Solder	42996	CH6474	GC-2251	59347.38
12/5/78	Solder	42016	CH6504	GC-2251	69515.47
12/11/78	Lead Tin Alloy	41520	CH6393	GC-2251	63096.83
11/22/78	Lead-tin Alloy	43360	CH6385	GC-2251	72886.95
11/2/78		41976	CH6507	GC-2251	64412.17
12/11/78	Lead tin alloy	40010	CH6569	GC 2551	58818.46
12/27/78	tin/lead alloy	40616	CH6570	GC-2985	64693.16
12/27/78	tin/lead alloy	41396	CH6571	PT-2637	64424.59
12/27/78	tin lead alloy	42434	CH6579	GC 2985	72511.22
12/28/78	tin lead alloy	39138	CH6576	GC 2985	63943.66
12/28/78	tin lead alloy	44912	CH6577	GC-2985	73269.44
12/28/78	Scrap Solder	39560	CH6588	GC-2985	66429.15
1/2/79	tin/lead alloy	41396	CH6599	GC-2985	60460.7
1/5/79	Lead - Tin Alloy	41196	CH6613	GC-2985	71458.58
1/9/79	Lead Tin Alloy	39956	CH6659	GC-2985	66874.36
1/13/79	tin/lead alloy	40416	CH6749	GC-2985	75965.91
2/3/79	tin/lead alloy	41536	CH6765	GC-2985	64261.66
2/14/79	tin lead alloy	43014	CH6785	GC-2985	72521.6
2/16/79	tin lead alloy	40416	CH2985	GC-2985	73856.2
2/20/79	tin lead alloy	42154	CH6852	GC-2985	79940.84
2/28/79	tin lead alloy	43794	CH6878	GC-2985	74375.35
3/3/79	tin lead alloy	44234	CH6897	GC 2985	63732.34
3/14/79	Lead Tin Alloy	43380	CH6917	GC 2985	70779.47
3/16/79	Lead Tin Alloy	39358	CH6930	GC 2985	68238.9
3/21/79	tin lead alloy	41854	CH6946	GC-2985	75822.71
3/23/79	tin/lead alloy	37900		GC 3589	83179.13
3/23/79	Lot B	41600		GC 3589	80493.6
4/6/79	Lead tin alloy	36481	CH7037	GC3589	55655.41
3/27/79	tin lead alloy	37080	CH6971	GC-2985	70340.76
3/28/79	tin lead alloy	37080	CH6984	GC-2985	66321.98
3/30/79	tin lead alloy	39238	CH7000	GC-2985	63655.3
4/11/79	tin/lead alloy	39179	CH7055	GC-3589	57260.11
4/23/79	Blocks Lead Tin Alloy	20809	CH7107	GC 3589	35818.53
4/24/79	Blocks Lead Tin Alloy	20729	CH7113	GC 3589	35434.15
4/26/79	Lead Tin Alloy	39519	CH7121	GC 3589	73655.51
4/30/79	tin/lead alloy	37340	CH7141	GC-3589	67611.54
5/1/79	tin/lead alloy	37240	CH7138	GC-3589	70536.28
5/14/79	tin lead alloy	8264	CH7148	GC 3263	3057.68
5/16/79	tin/lead alloy	43956	CH7216	GC 3589	89098.81
5/2/79	tin/lead alloy	41774	CH7230	GC 3589	78263.59
5/4/79	tin lead alloy	30470	CH7324	GC 3589	59300.71
5/7/79	tin lead alloy	24314	CH7153	GC-3589	42520.32
5/10/79	tin lead alloy	39236		GC-3589	88504.65
5/21/79	tin/lead alloy	38819	CH7163	GC-3589	75347.68
5/23/79	tin/lead alloy	38738	CH7173	GC-3589	75419.01
6/4/79	tin/lead alloy	38939	CH7198	GC-3589	78567.22
6/5/79	tin/lead alloy	44240	CH7254	GC3539	85334.54
6/7/79	tin/lead alloy	44120	CH7257	GC3539	88804.46
6/11/79	tin/lead alloy	37020	CH7314	GC 3589	74328.76
6/12/79	tin/lead alloy	44016	CH7324	GC-3589	59300.71
6/26/79	tin/lead alloy	42917	CH7348	GC-3589	81157.29
	tin/lead alloy	41358	CH7354	GC-3589	80503.71
	tin/lead alloy	45396	CH7435	GC-3589	74845.57
					71376.13

7/2/79	Tin/Lead Alloy	39658	CH7454	GC-3589	75556.42
7/9/79	Tin/Lead Alloy	43317	CH7476	GC-3589	76231.13
7/17/79	Tin/Lead Alloy	42697	CH7516	GC-3589	80453.96
7/23/79	Tin/Lead Alloy	43934	CH7546	GC3589	75263.34
7/31/79	Tin/Lead Alloy	43597	CH7576	GC-3589	79577.6
8/6/79	Tin/Lead Alloy	41038	CH7601	GC-3589	79675.28
8/20/79	Tin/Lead Alloy	41478	CH7673	GC-3589	77003.91
5/16/79	Tin/Lead Alloy	41774	CH7230	GC-3589	78263.59
5/14/79	Tin/Lead Alloy	43956		GC-3589	89098.81

TOTAL 5177265 \$ 8134066.

LOHDS FROM TRACORP TO CHEMETCO

DATE	B/L DESCRIPTION	B/L NUMBER	TOWNRGE	PRICE
7/30/75	Scrap Copper Wire	5-3318	45860	73.38
8/1/75	Scrap Copper Wire	5-3318	44718	71.55
8/7/75	Scrap Copper Wire	5-3444	43796	70.07
8/11/75	Scrap Copper Wire, part lots-3444	5-3444	39623	63.4
8/15/75	Scrap Copper Wire	500-03690	42921	68.67
8/21/75	Scrap Copper Wire	5-3690	38200	64
8/28/75	Scrap Copper Wire	5-3690	40020	64.03
			295138	

Description: Tin lead alloy

	pounds	percentage
Total shipped to NL:	3,115,776	100.000
Amount Chemetco shipped:	3,058,510	98.162
Remainder:	57,266	
Breaks down as:		
Ace Comb Company:	42,033	1.349
Southern Scrap MP:	10,354	.332
Jay Metal Processing:	4,611	.148
Continental Can Co:	268	.009

Description: Lead Tin Alloy

Total shipped to NL:	1,282,596	100.000
Amount Chemetco shipped:	1,187,916	92.618
Remainder:	94,680	
Breaks down as:		
Billiton Metals:	94,680	7.382

Description: Scrap Copper Wire

This is a mistake by USEPA because this material was shipped to us from NL rather than being shipped from us.

Description: Solder

Total shipped to NL:	4,529,337	100.000
Amount Chemetco shipped:	372,010	8.213
Remainder:	4,157,327	

Description: Scrap Solder

Total shipped to NL:	1,334,343	100.000
Amount Chemetco shipped:	211,044	15.816
Remainder:	1,123,299	

Description: Antimonial Lead

Total shipped to NL:	4,846,091	100.000
Amount Chemetco Shipped:	53,738	1.109
Remainder:	4,792,353	

Description: Scrap_Sb_Lead

Total shipped to NL:	143,471	100.000
Amount Chemetco shipped:	45,558	31.754
Remainder:	97,913	

Description: Scrap_Lead

Total shipped to NL:	15,045,035	100.000
Amount Chemetco shipped:	71,000	.472
Remainder:	14,974,035	

Description: Remelt_Scrap_Solder

Total shipped to NL:	48,730	100.000
Amount Chemetco shipped:	19,840	40.714
Remainder:	28,890	

Description: Reject_Material

Total shipped to NL:	12,186	100.000
Amount Chemetco shipped:	4,543	37.280
Remainder:	7,643	

Description: Iron_Hooks

Total shipped to NL:	3075	100.000
Amount Chemetco shipped:	88	2.862
Remainder:	2987	

Description: Hooks

Total shipped to NL:	46	100.000
Amount Chemetco shipped:	46	100.000